

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

RAMON ARMAS BORROTO, JR.,

Plaintiff,

vs.

Case No. 5:04cv165-RH/WCS

OFFICER McDONALD, et al.,

Defendants.

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ORDER

Plaintiff, a *pro se* inmate, has filed a motion to strike Defendants' motion for reconsideration. Doc. 55. Plaintiff's motion was filed in the Clerk's office on September 12, 2005. Doc. 55. Defendant's motion for reconsideration was filed on August 19, 2005. Doc. 48.

The federal rules provide that "upon motion made by a party within 20 days after the service of the pleading . . . the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." FED. R. CIV. P. 12(f). Plaintiff's motion was technically filed on the twenty-fourth day and is not timely. *Cf.* docs. 48, 55. However, giving Plaintiff the benefit of the prison "mailbox" rule, Plaintiff signed the certificate of service for the motion and gave it to

prison officials for mailing on September 6, 2005. Doc. 55, p. 4; Adams v. United States, 173 F.3d 1339, 1341 (11th Cir. 1999)(prisoner's motion deemed filed on the date it is given to prison authorities for mailing). Following that rule,¹ Plaintiff's motion was timely filed on the eighteenth day.

Nevertheless, Rule 12(f) applies to "any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." FED. R. CIV. P. 12(f). While it is arguable that the motion for reconsideration is redundant, motions to strike are not favored. 2 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE, ¶ 12.21(2) (2d ed.), *cited with approval* Craig Funeral Home, Inc. v. State Farm Mut. Auto. Ins. Co., 254 F.2d 569, 572 (5th Cir. 1958)(Rives, J., concurring specially). Granting a motion to strike should only be entered when the pleading can "have no possible bearing" upon the matter. *Id.* That is clearly not the case here. Plaintiff's motion to strike should more appropriately be considered as a response in opposition to Defendants' motion for reconsideration and directed to the attention of the assigned District Judge.

Accordingly, it is

¹ In Adams v. United States, *supra*, the court relied on the decision in Houston v. Lack, 487 U.S. 266, 275, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988), which held that a *pro se* prisoner's notice of appeal is considered to be filed on the date that the prisoner delivers the notice to prison officials for mailing. This rule recognizes that after giving a document to prison officials, it is out of the inmate's control and he must "entrust the forwarding of his" mail to "prison authorities whom he cannot control or supervise and who may have every incentive to delay." Adams, 173 F.3d at 1341, *quoting houston*, 487 U.S. at 271, 108 S.Ct. 2379.

ORDERED:

1. To the extent Plaintiff's motion to strike, doc. 55, is construed as a response in opposition to Defendants' motion for reconsideration, doc. 48, the document shall be immediately referred to the district judge for consideration in ruling on the pending motion for reconsideration.

2. As a motion to strike, doc. 55, Plaintiff's motion is **DENIED**.

3. The Clerk shall return this file to the undersigned after a ruling is entered on the motion for reconsideration, doc. 48.

DONE AND ORDERED on October 6, 2005.

s/ William C. Sherrill, Jr.
WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE